

MEMORANDUM OF LAW

DATE: July 15, 1986

TO: Armand V. Campillo, Director of Water
Utilities

FROM: City Attorney

SUBJECT: Contracts without Competitive Bidding

Arising from the problems surrounding Pump Station 64, you have asked for our review of the competitive bidding process and what exceptions may exist to expedite construction contracts.

As you are aware, the San Diego City Charter provides for competitive bidding in the purchasing of supplies and equipment in section 35 and in the letting of construction contracts in section 94. While this is a sound requirement to serve the public in securing the lowest price and to guard against fraud and favoritism, we find that the practice is not without exception.

This office has previously opined that contracts for individual services requiring special skills do not fall within the ambit of competitive bidding. San Diego City Attorney Opinion No. 74-1, dated March 20, 1974. Similarly, McQuillin on Municipal Corporations, 3d ed., Sec. 29.38 cites additional exceptions which include an emergency exception.

Sec. 29.38. Exceptions to the rule.

Exceptions are sometimes made to the rule that when so required by statute or charter, municipal contracts must be let under competitive bidding. In case of an emergency, where it is essential to the health, safety, or welfare of the people that immediate action be taken, the requirement may be dispensed with. ¶Emphasis added.σ

McQuillin, supra, at p. 325.

While this general emergency exception has been sanctioned in California, *Los Angeles Dredging Co. v. Long Beach*, 210 Cal. 348 (1930), we need not rely on the general exemption in light of the specific exemption contained in San Diego City Charter Sec. 94 which provides in pertinent part:

In case of a great public calamity, such as extraordinary fire, flood, storm, epidemic or other disaster the Council may, by resolution passed by a vote of two-thirds of

the members elected to the Council, determine and declare that the public interest or necessity demands the immediate expenditure of public money to safeguard life, health or property, and thereupon they may proceed, without advertising for bids or receiving the same, to expend, or enter into a contract involving the expenditure of any sum required in such emergency, on hand in the City treasury and available for such purpose. All contracts before execution shall be approved as to form and legality by the City Attorney.

It is beyond dispute that the circumstances of repeated overflows and environmental contamination rise to the level of a public calamity. A calamity is by definition a situation of major misfortune marked by great loss and lasting distress. Webster's New Collegiate Dictionary (1977). To avoid such a condition and safeguard the life, health and property of its citizens, the City may dispense with competitive bidding so long as the emergency is defined with specificity and the required two-thirds vote is obtained.

While not explicit in San Diego Charter Sec. 35 for the purchase of supplies and equipment, we believe the general exception of dispensing with competitive bidding in emergency situations similarly applies. Since there is no explicit requirement for a two-thirds vote found in section 35, we decline to imply such a restriction.

We trust this answers your question with respect to contracts and articles sought to remedy the emergency situation at Pump Station 64 and hasten to add that our advice is limited to that circumstance. All exceptions to competitive bidding must of necessity be reviewed individually on their own unique facts.

JOHN W. WITT, City Attorney

By

Ted Bromfield, Chief Deputy

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